

HOUSE BILL No. 1763

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-20; IC 25-34.1-4.5.

Synopsis: Interest bearing real estate trust accounts. Allows a principal broker and a financial institution to establish an interest bearing real estate trust account. Provides that interest generated by an interest bearing real estate trust account must be transferred to the housing finance authority for deposit in the housing trust fund. Requires a financial institution that offers a real estate trust account to offer an interest bearing real estate trust account. Permits a principal broker to opt out, and specifies that interest generated by an interest bearing real estate trust account is not taxable to the principal broker or to the client. Requires the housing authority to submit an annual report to the real estate commission. Grants immunity from liability to a principal broker and financial institution for transactions involving interest bearing real estate trust accounts. Makes certain information concerning interest bearing real estate trust accounts confidential.

Effective: July 1, 2005.

GiaQuinta, Burton

January 19, 2005, read first time and referred to Committee on Financial Institutions.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1763

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-20-1-18 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. The authority shall,
3 promptly following the close of each fiscal year, submit an annual
4 report of its activities for the preceding year to the governor, **the**
5 **Indiana real estate commission**, and the general assembly. An annual
6 report submitted under this section to the general assembly must be in
7 an electronic format under IC 5-14-6. The report shall set forth a
8 complete operating and financial statement of the authority during such
9 year, and a copy of such report shall be available to inspection by the
10 public at the Indianapolis office of the authority. The authority shall
11 cause an audit of its books and accounts to be made at least once in
12 each year by an independent certified public accountant and the cost
13 thereof may be paid from any available money of the authority.

14 SECTION 2. IC 5-20-4-7 IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) There is established the
16 housing trust fund. The fund shall be administered by the Indiana
17 housing finance authority under the direction of the Indiana housing

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1 finance authority's board.

2 (b) The fund consists of the following resources:

3 (1) Appropriations from the general assembly.

4 (2) Gifts and grants to the fund.

5 (3) Investment income earned on the fund's assets.

6 (4) Repayments of loans from the fund.

7 (5) Funds borrowed from the board for depositories insurance
8 fund (IC 5-13-12-7).

9 **(6) Interest from real estate trust accounts (IC 25-34.1-4.5).**

10 (c) The treasurer of state shall invest the money in the fund not
11 currently needed to meet the obligations of the fund in the same
12 manner as other public funds may be invested.

13 (d) The money remaining in the fund at the end of a fiscal year does
14 not revert to the state general fund.

15 (e) Interest earned on the fund may be used by the Indiana housing
16 finance authority to pay expenses incurred in the administration of the
17 fund.

18 **(f) For purposes of Indiana law, income received by the Indiana**
19 **housing finance authority from the remittance of interest from an**
20 **interest bearing real estate trust account under IC 25-34.1-4.5 is**
21 **not taxable to:**

22 **(1) the principal broker maintaining the interest bearing real**
23 **estate trust account; or**

24 **(2) the client whose funds are deposited in the interest bearing**
25 **real estate trust account.**

26 SECTION 3. IC 25-34.1-4.5 IS ADDED TO THE INDIANA CODE
27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2005]:

29 **Chapter 4.5. Interest on Real Estate Trust Accounts**

30 **Sec. 1. (a) The general assembly finds that:**

31 **(1) there exists in Indiana a need for safe and sanitary**
32 **residential housing that is within the financial means of low**
33 **and moderate income persons and families;**

34 **(2) the absence of safe and sanitary residential housing is a**
35 **threat to the health, safety, morals, and welfare of the citizens**
36 **of Indiana and will require an excessive expenditure of public**
37 **funds for the social problems created by this absence;**

38 **(3) additional funding will enable private enterprise and**
39 **investment to:**

40 **(A) construct additional safe and sanitary residential**
41 **housing at prices or rents that persons and families of low**
42 **and moderate income can afford; or**

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(B) rehabilitate much of the present low and moderate income housing to return it to a safe and sanitary condition;

(4) it is imperative that the supply of residential housing for persons and families of low and moderate income displaced by public actions or natural disaster be increased;

(5) private enterprise and investment should be encouraged to sponsor, build, and rehabilitate residential housing for low and moderate income persons and families;

(6) the provision of safe and sanitary housing for persons and families of low and moderate income who would otherwise be unable to obtain adequate housing at costs they could afford is a valid public purpose;

(7) there exists in Indiana a need to stimulate the residential housing industry; and

(8) the use of funds collected under this chapter for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) It is the purpose of this chapter to expand the availability and improve the quality of housing for persons and families of low and moderate income and to initiate new programs that will provide services to them.

Sec. 2. This chapter does not apply to the investment of nonqualified funds by a principal broker:

(1) in any other investment specified by a client or beneficial owner; or

(2) as agreed to by the client, beneficial owner, or principal broker.

Sec. 3. The following definitions apply throughout this chapter:

(1) "Authority" refers to the Indiana housing finance authority established by IC 5-20-1-3.

(2) "Depository financial institution" means a bank, a bank or trust company, a credit union, an industrial loan and investment company, a savings bank, or a savings association, whether chartered, incorporated, licensed, or organized under Indiana law or federal law that:

(A) does business in Indiana; and

(B) is insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund, the National Credit Union Administration, or an alternate share insurer.

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(3) "Fund" refers to the housing trust fund established by IC 5-20-4-7.

(4) "Interest bearing real estate trust account" means an account with a depository financial institution that is:

(A) unsegregated;

(B) interest bearing;

(C) for the deposit of qualified funds by a principal broker; and

(D) capable of being drawn upon by the depositor in the same manner as a checking account that is not interest bearing.

(5) "Qualified funds" means money received by a principal broker from a client or beneficial owner in a fiduciary capacity for deposit in a trust account.

Sec. 4. (a) Except as provided in subsection (b), every principal broker is subject to this chapter.

(b) A principal broker is not subject to this chapter if the principal broker submits a written statement to the commission electing not to participate.

(c) If a principal broker does not act under subsection (b), the commission shall presume that the principal broker has elected to be subject to this chapter.

(d) A principal broker subject to this chapter shall place all qualified funds in an interest bearing real estate trust account.

(e) A principal broker subject to this chapter shall determine if money received from a client or beneficial owner constitutes qualified funds.

(f) A principal broker:

(1) does not breach a fiduciary duty;

(2) is not liable in damages; and

(3) is not subject to disciplinary action;

because of a deposit of money in an interest bearing real estate trust account if the principal broker acted in accordance with a good faith judgment that the money constituted qualified funds.

Sec. 5. (a) If the depositor and depository financial institution agree, a real estate trust account that contains qualified funds held by a principal broker subject to this chapter may be made an interest bearing real estate trust account.

(b) The terms and conditions of an interest bearing real estate trust account, except as required under this chapter, shall be determined by the depositor and the depository financial institution. A depository financial institution that offers a real

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1 estate trust account must offer an interest bearing real estate trust
2 account.

3 (c) The authority owns the beneficial interest in the interest
4 accrued by the interest bearing real estate trust account
5 maintained by a principal broker subject to this chapter.

6 (d) Except for amounts deducted under terms or conditions
7 agreed upon under subsection (b), a depository financial institution
8 shall remit any interest earned on an interest bearing real estate
9 trust account to the authority for deposit into the fund.

10 (e) A depository financial institution shall make the remittance
11 required by subsection (d) not less frequently than quarterly and
12 not later than fifteen (15) days after the end of the remittance
13 period.

14 (f) A depository financial institution shall transmit a statement
15 to:

- 16 (1) the commission;
- 17 (2) the authority; and
- 18 (3) the principal broker who maintains the interest bearing
19 real estate trust account;

20 when the depository financial institution remits interest under
21 subsection (d).

22 (g) The statement described in subsection (f) must contain the
23 following information:

- 24 (1) The name of the account.
- 25 (2) The amount of interest remitted from the account.

26 (h) A depository financial institution is not required to
27 determine or inquire whether a deposit includes qualified funds.

28 (i) The remittance of interest by a depository financial
29 institution to the authority from an interest bearing real estate
30 trust account is a valid and sufficient release and discharge of a
31 claim by an entity against the depository financial institution for
32 the remittance.

33 (j) An entity may not maintain an action against a depository
34 financial institution solely for:

- 35 (1) offering, opening, or maintaining an interest bearing real
36 estate trust account;
- 37 (2) accepting funds for deposit in an interest bearing real
38 estate trust account; or
- 39 (3) remitting interest to the authority.

40 (k) A paper, a record, a document, or other information
41 identifying a principal broker, client, or beneficial owner of an
42 interest bearing real estate trust account is confidential.

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- 1 **(l) The authority or a depository financial institution may not**
2 **disclose information described by subsection (k), except:**
3 **(1) with the consent of the principal broker maintaining the**
4 **account; or**
5 **(2) as permitted by:**
6 **(A) law; or**
7 **(B) rule.**

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